



Town of Westport
Planning and Zoning Commission
Town Hall, 110 Myrtle Avenue
Westport, CT 06880
Tel: 203-341-1030 Fax: 203-454-6145
www.westportct.gov

Planning and Zoning Commission Minutes

March 05, 2020

Meeting Started: 7:05 P.M.

In attendance: Danielle Dobin, Chip Stephens, Gregory Rutstein, Michael Cammeyer, Catherine Walsh, Paul Lebowitz, and Al Gratrix Jr.

P&Z Staff: Mary Young, AICP, P&Z Director.
Michelle Perillie, AICP, CFM, Planner.

I WORK SESSION

- Approval of Minutes: 2/6/20 – Approved as amended, 6-0 (No Gratrix vote).

II PUBLIC MEETING

1. **71 Hillandale Rd:** Appl. #19-064 submitted by Richard Benson for property owned by Congregational Church of Greens Farms for expansions and renovation of existing building with no proposed change to building occupancy located in the Residence A zone, PID#F08105000.

Action: Item was opened, no testimony received, and continued to 4/2/20 hearing.

2. **Text Amendment #775:** Appl.#19-056 submitted by the Planning and Zoning Commission for changes to Sec. 5-2 to add new definitions for Berm and Dune and to modify Sec. 32-8, Excavation and Filling of Land, to propose exemptions for slope and restoration standards when projects involve beach nourishment or replenishment. A copy of the proposed text amendment is on file in the Westport Town Clerk's Office and is on file in the Westport Planning and Zoning Office.

Action: Testimony received and hearing closed. Adopted, Vote: 7-0-0, *See attached resolution.*

3. **50 Compo Mill Cove:** Appl. #19-063 submitted by Tom Ryder, LandTech for property owned by Pasquel Malpeso Jr. for a Coastal Site Plan application to retain stone planter box and associated wall located in the Residence A zone, PID#E04091000

Seated at 1/23/20 meeting: Mr. Stephens, Mr. Rutstein, Ms. Walsh, Mr. Lebowitz, Mr. Olefson, and Ms. Laskin.

Action: No testimony was received and continued to 3/19/20 hearing.

4. **44 Compo Mill Cove:** Appl. #19-065 submitted by Compo Cove LLC c/o Robin Tauck for property owned by Compo Cove LLC for a Coastal Site Plan approval to remove existing pre-1995 seawall and construct a revetment and planted dune located in the Residence A zone, PID#E04094000

Action: Item was opened. testimony was received, and continued 3/19/20.

III WORK SESSION

(The following items will be discussed and voted on as time permits. The public may observe the work session, but not participate.)

New Business:

5. **10 Little Fox Lane:** Appl. #19-050 submitted by Jim Kousidis, Kousidis Engineering LLC for property owned by Michael Ippolito for a Site Plan and Special Permit for excavation and fill activities to construct a horse riding rink and associated regrading for property located in the Residence AAA zone, PID#C15001000

Seated at 1/23/20 meeting: Ms. Dobin, Mr. Stephens, Mr. Rutstein, Mr. Lebowitz, Ms. Walsh, Mr. Cammeyer, and Mr. Olefson.

Action: Hearing closed. **Granted, Vote: 5-0-1 (Stephens), See attached resolution.**

No Old Business:

No Old Business:

Meeting Concluded: 8:05 P.M.

Respectfully submitted by S. McNally, March 11, 2020



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Hearing: March 5, 2020

Decision: March 5, 2020

March 9, 2020

RE: Text Amendment #775, Appl. #19-056, Changes to Specific Terms, §5, and Excavation and Filling of Land, §32-8

To Whom It May Concern:

This is to certify that at a meeting of the Westport Planning and Zoning Commission held March 5, 2020 on it was moved by Mr. Gratrix and seconded by Mrs. Walsh to adopt the following resolution.

RESOLUTION #19-056

WHEREAS, THE PLANNING AND ZONING COMMISSION met on March 5, 2020 and made the following findings:

1. Text Amendment #775 proposes to add definitions and allow flexibility for property owners seeking to conduct beach nourishment or replenishment activities and reduce erosion on their properties abutting Long Island Sound.
2. The Planning and Zoning Commission at their 11/7/19 Work Session unanimously endorsed this amendment to be scheduled for review at a public hearing.
3. Residents who own property adjacent to coastal waters frequently experience wave action resulting in beach depletion and land erosion. Building berms and dunes are techniques to mitigate erosion. This mitigation involves changing the existing topography or grades.
4. Currently the excavation and fill regulations require the slope of sand dunes, and all manmade earth slopes, cannot exceed five (5) horizontal to one (1) vertical (20%). In most cases, sand dunes are more effective with a slope greater than 20%.

5. §5-2, Proposes to add Definitions for Berm and Dune.

This change will provide Specific Terms for Berm and Dune so that it will be clear when exemptions to Excavation and Fill standards in §32-8.3.2 (Slopes) are permitted.

6. Beach nourishment and/or replenishment projects benefit the beach system and already require a Coastal Site Plan approval so an additional layer of approvals is not necessary. This change does not exempt beach nourishment and/or replenishment projects from having to comply with the Standards listed in §32-8.3. The projects will be required to obtain Coastal Site Plan approval.
7. §32-8.3.2, Permits slopes of greater than 20% for dunes created as part of beach nourishment and/or replenishment projects, if recommended by CT DEEP's Land and Water Resources Division due to site characteristics.
8. Currently regulations require that the slope of dunes, as is for all manmade earth slopes, cannot exceed five (5) horizontal to one (1) vertical (20%). In most cases, dunes are more effective with a slope greater than 20%. The change in the degree of slope is only permitted if recommended by CT DEEP.
9. Staff envisions applicants would review plans for beach nourishment and/or replenishment projects with CT DEEP prior to submission of their application to the Planning and Zoning Department. Staff will send a referral to CT DEEP and receive their comment as part of our normal transmittal procedure.
10. §32-8.4.1, Exempts the requirements that a layer of arable soil of reasonable depth be spread over the premises upon the completion of a beach nourishment and/or replenishment project.
11. Currently the Excavation and Fill regulations require that the restoration of the site includes the placement of a layer of arable soil of reasonable depth be spread over the premises upon the completion of project. This requirement is not necessary for these types of projects.

12. The Connecticut DEEP's Land and Water Resources Division submitted comments dated 2/7/20 indicating they reviewed the amendment for consistency with the policies and standards of the Connecticut Coastal Management Act (CCMA), and find them to be consistent with the CCMA.
13. The Conservation Commission submitted comments dated 2/21/20 stating they are supportive of the proposed changes to the Zoning Regulations.
14. The Engineering Department submitted comments dated 2/27/20 indicating they find no issues with the text amendment.
15. Comments dated 3/5/20 were received from the Shellfish Commission suggesting that in the near future the Planning and Zoning Commission adopt a definition for Beach Nourishment. In addition, the comments request that any project involving either Beach Nourishment or a Flood and Erosion Control Structure continue to be required by Coastal Site Plan Review.
16. Public notices were published in the newspaper and a press release issued to promote public awareness of the amendment.
17. A public hearing was held to receive testimony from the public on the amendment.
18. Members of the Planning and Zoning Commission recommended the amendment be revised at the 3/5/20 hearing to simplify the text.

NOW THEREFORE, BE IT RESOLVED Text Amendment #775: Appl. #19-056 submitted by the Planning and Zoning Commission for changes to Sec. 5-2 to add new definitions for Berm and Dune and to modify Sec. 32-8, Excavation and Filling of Land, to propose exemptions for slope and restoration standards when projects involve beach nourishment or replenishment be **ADOPTED AS MODIFIED** for the following reasons:

1. The proposed amendment will add definitions and allow flexibility for property owners seeking to conduct beach nourishment or replenishment activities and reduce erosion on their properties abutting Long Island Sound.

2. The amendment is consistent with the 2017 *Plan of Conservation and Development* that contains the following goal and recommendation:

From page 52 of Chapter 6, "*Manage Coastal Areas*"

"In terms of erosion potential from wave action and flooding, the Plan recommends that new projects be required to provide non-structural solutions in the coastal area as opposed to groins, seawalls, revetments, etc." Pg. 52

VOTE:

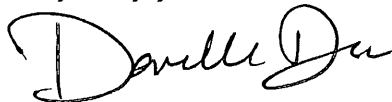
AYES -7- {Dobin, Stephens, Rutstein, Walsh, Lebowitz, Cammeyer,
Gratrix}

NAYS -0-

ABSTENTIONS -0-

The effective date of this amendment is: March 30, 2020.

Very truly yours,

A handwritten signature in black ink, appearing to read "Danielle Dobin".

Danielle Dobin
Chairman, Planning & Zoning Commission

cc: K. Wilberg, Town Engineer
A. Mozian, Conservation Director

Attached

Adopted Text Amendment #775, dated 3/5/20

Text Amendment #775/#19-056

Submitted: 11/12/19

Received: 11/14/19

Revised: 1/30/20

Adopted as Modified: 3/5/20

Public Hearing: 3/5/20

Adopted: _____

Effective date: _____

Deleted language is ~~[struck out and in brackets]~~; New language is underlined.

§5, DEFINITIONS

5-2, Specific Terms

TERM	DEFINITION
<u>Berm:</u>	<u>A man-made deposit of material that is raised above the natural surface of the land.</u>
<u>Dunes:</u>	<u>A mound or ridge of sand or loose sediment natural (or man-made) within a marine beach system.</u>

§32 SUPPLEMENTARY USE REGULATIONS Revised 07-26-17

32-8 Excavation and Filling of Land

Within the Town of Westport, the excavation of land, stockpiling of earth products on a site and/or filling of land with earth products such as, but not limited to: topsoil, loam, sand, gravel, clay, stone minerals or fuel is permitted in any Zoning District subject to Special Permit and Site Plan approval in accordance with §43.

32-8.1 Activities that require an Excavation & Fill Permit and Exempt

- 32-8.1.1 All regrading of properties regardless of the amount of disturbance or quantity of material involved shall require Site Plan and Special Permit approval by the Planning & Zoning Commission for an Excavation & Fill Permit except as noted below.
- 32-8.1.2 Exemptions: The following activities shall be exempt from requiring an Excavation & Fill permit but shall conform to the standards listed in §32-8.2 and §32-8.3:
- (a) Excavations or filling of earth products in connection with the construction or alteration of a principal building or structure, swimming pool, tennis court, sports court, septic fields or driveway on the same premises no more than 25 feet from said activity provided a zoning permit or health permit has been issued for such construction, alteration or activity and such work is specified in said permit.

- (b) Excavations or filling of earth products in connection with the construction or alteration of subsurface drainage systems on the same premises no more than 5 feet from said activity provided a zoning permit or health permit has been issued for such construction, alteration or activity and such work is specified in said permit.
- (c) Construction, grading or changing of contours in accordance with plans for the same that have been approved by the Planning & Zoning Commission, covering the roads, lots and other improvements in an approved Subdivision, Site Plan or Special Permit application.
- (d) Municipal activities involving roadways, bridges, culverts or other infrastructure for the purpose of maintenance, repair, realignment, reconstruction or public safety projects as listed in this subsection, that by necessity involve extending excavation or fill onto private property where grading rights have been obtained.
- (e) Construction of a retaining wall used solely for the purpose of constructing a driveway or roadway.
- (f) Construction of approved CT DEEP shoreline flood and erosion control structures.
- (g) The placement or installation of utility lines or services.
- (h) Incidental filling, grading or excavation in connection with maintenance or repairs to a property.
- (i) Customary landscaping and temporary collecting, stockpiling and reuse of topsoil.-

32-8.2 Excessive Fill Regulation

The purpose of this Section is to limit the total amount of excavation or fill allowed on any lot, to restrict the development of those parcels of land where an excessive amount of excavation or fill would be necessary to make the land developable and to prevent adverse drainage impacts on surrounding properties resulting there from:

32-8.2.1 Excessive Excavation or Fill

- (a) In any Residential Zoning District, the maximum amount of excavation or fill permitted on any lot of 10,000 square feet or more in area shall not exceed an amount greater than that required to raise or lower said parcel ten (10) feet above or below the existing natural grades over an area equal to 50% of the allowable Total Coverage in the respective zone.
- (b) In any Non Residential Zoning District, the maximum amount of excavation or fill material permitted on any lot of 10,000 square feet or more in area shall not exceed an amount greater than that required to raise or lower said parcel ten (10) feet above or below the existing natural grades over an area equal to 50% of the allowable Building Coverage in the respective zone.
- (c) For lots with fewer than 10,000 square feet in a Residential or Non Residential Zone, the maximum amount of excavation or fill shall

not exceed 500 cubic yards and shall not exceed ten (10) feet above or below the existing natural grade in any location.

32-8.2.2 Formula

The following formula shall be used to compute the maximum allowable excavation or fill amount: Lot Area (square feet) X 50% of Total Coverage percentage in Residential Zoning District or 50% of Building Coverage percentage in Non Residential Zoning District X ten (10) feet divided by 27 cubic feet/1 cubic yard = maximum allowable excavation or fill in cubic yards.

32-8.2.3 Maximum Fill or Excavation Quantity

No portion of any lot shall be filled or excavated to a height or depth greater than ten (10) feet above or below the existing natural grade. On any lot the total allowable quantity of fill permitted under §32-8.2, above, shall exclude any fill that is required by the WWHD under §32-8.2.4 below. Fill height shall not exceed a ratio of 0.20 relative to the distance from the property line, excavation or fill of driveways in front and side setbacks shall be exempt from this requirement.

32-8.2.4 Limitation of Fill for Septic Systems

In instances where fill material is expressly required by Westport-Weston Health District for a septic system, both primary and reserve areas, the total area to be filled for septic purposes shall not be raised more than 4.0 feet above the existing natural grades at the time of application for either a Zoning Permit, Site Plan, Special Permit or Subdivision Application; except that the total amount of fill shall not exceed 1,185 cubic yards, based on an area of 100 feet X 80 feet = 8,000 square feet X 4 feet = 32,000 divided by 27 = 1,185 cubic yards.

32-8.2.5 Maximum Fill Height For Septic Systems

When fill is required for a septic system, no portion of any lot shall be filled to a height greater than four (4) feet above the existing natural grade. The amount of fill permitted for a septic system shall be allowed exclusive of any fill allowed under §32-8.2, above.

32-8.2.6 Total Maximum Excavation or Fill

The combined total maximum allowable quantity of excavation and fill on any lot shall not exceed the sum of the maximum quantities of excavation and fill allowed under §32-8.2 and 32-8.2.5, above. This shall be based upon the total excavation and fill, not the net change.

32-8.2.7 Natural Existing Grades

The natural existing grades shall be either the contour of elevations based upon an up to date topography survey verified in the field with even numbered two (2) foot contour as a minimum, as may be amended from time to time, or the contour elevations and/or spot elevations as shown on an existing conditions survey map prepared by a Registered Land Surveyor. Said contours or spot elevations shall be based on North American Vertical Datum (NAVD) of 1988 datum.

Grades established using an Excavation and Fill application or Zoning Permit shall not be used to establish a new existing average grade for the

purpose of measuring building height until five (5) years have passed from the date of approval.

32-8.3 Standards

The proposed excavation or filling project, if approved, shall conform to the following standards:

- 32-8.3.1 The premises shall be excavated and graded in conformity with the proposed contour plans as approved.
- 32-8.3.2 All manmade earth slopes shall not exceed five (5) horizontal to one (1) vertical (20%), unless approved by the Town Engineer. Slopes of greater than 20% but no more than 35%, may be permitted for sand dunes created as part of beach nourishment or replenishment projects, if recommended by CT DEEP Land and Water Resources Division due to site characteristics.

There shall not be any grading or slope changes within five (5) feet of any lot line except for

 - (a) The installation of driveways on all lots.
 - (b) New streets and driveways in approved subdivisions.
- 32-8.3.3 No equipment other than for digging, drilling, leveling and bringing in or carting away excavated material or fill shall be maintained on the premises.
- 32-8.3.4 No processing of earth of any kind shall be conducted on the site except for material that is excavated directly from the project site for use on the project site.
- 32-8.3.5 There shall be no sharp declivities, pits or depressions.
- 32-8.3.6 Proper surface drainage shall be provided and groundwater shall not be polluted.
- 32-8.3.7 After excavation or filling, the premises shall be cleared of debris and temporary structures within the time provided in the permit.
- 32-8.3.8 Fill material shall not include organic (for example tree stumps, leaves, brush or other materials that decompose, etc.) or petroleum based products or materials.
- 32-8.3.9 Erosion Control measures shall be required as provided for in §37.
- 32-8.3.10 Activities may not be undertaken to circumvent the protection of property sought by the provisions of this regulation so as to change the groundwater table, to excavate a basement or cellar built below the ground water table thereby increasing surface run off by pumping water to the surface or to alter natural drainage basins or flows. The Zoning Official or the Planning & Zoning Commission shall take appropriate enforcement action to prevent this from occurring.

32-8.4 Restoration Plan

The applicant shall submit a Restoration Plan showing final grading and landscaping and whatever other information is necessary to indicate how the site will be restored to permit future development of the site. Restoration shall include:

- 32-8.4.1 A layer of arable soil of reasonable depth to be spread over the premises upon the completion of the excavation or filling operation in accordance with approved contour lines, except for beach nourishment or replenishment projects.
- 32-8.4.2 A suitable ground cover planted and grown to an erosion resistant condition.

32-8.5 Considerations Affecting Approval

In reviewing all plans, consideration shall be given to protecting the public health, safety and welfare, the general objectives of Site Plan and Special Permit Review as found in §44-5 and §44-6 and the following specific considerations:

- 32-8.5.1 The following shall be considered: location, intensity and type of operation contemplated in each application. Conditions may be imposed for safety of operations and to prevent damage to adjacent lands or improvements, including the specifications of appropriate performance standards.
- 32-8.5.2 Filling with and/or removing earth products shall be restricted to areas which have access to roads of sufficient width and capacity to carry maximum projected loads. When alternate routes are available, truck traffic shall avoid routes which require passage through residential areas.
- 32-8.5.3 Locations shall be avoided where it is anticipated that the activity may cause slides, sinking, collapse of supporting soil, erosion by wind or water, water pollution, undue alterations of the water table of adjoining properties or any other deleterious effects.
- 32-8.5.4 Activities shall also be reviewed with respect to the condition of the site after completion of the operation and the relationship of that site to existing and permitted development in the general area in which the site is located. The applicant's proposed Restoration Plan for the site must demonstrate the extent to which the site can, and reliably will, be restored to condition, and will facilitate the development of the general area. For this purpose, the Commission shall exercise judgement as warranted by the circumstances of each case to impose conditions including but not limited to:
 - (a) Grading and landscaping requirements.
 - (b) Limitation on the months of the year, days of the week, and hours of the day during which any work may be performed on the premises.
 - (c) Limitations as to the size and type of machinery used on the premises.
 - (d) Place and manner of disposal of excavated materials, and/or source and variety of fill materials to be brought onto the premises.
 - (e) Requirements for the control of dust, noise, fumes and lighting.
 - (f) A bond shall be posted in accordance with §43-12 and 43-13, herein.
 - (g) A site monitor may be required. If required, it shall be paid for at the applicant's expense.



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Hearing: February 6, 2020

Decision: March 5, 2020.

March 9, 2020

Jim Kousidis
Kousidis Engineering, LLC
10-B First Street
Norwalk, CT 06887

RE: 10 Little Fox Lane, Special Permit/Excavation and Fill Appl. #19-050

Dear Mr. Kousidis:

This is to certify that at a meeting of the Westport Planning and Zoning Commission held on it was March 5, 2020, moved by Michael Cammeyer, and seconded by Danielle Dobin to adopt the following resolution.

RESOLUTION #19-050

WHEREAS, THE PLANNING AND ZONING COMMISSION met on March 5, 2020 and made the following findings:

Property Description

1. The subject property, 10 Little Fox Lane, lies along the west side of Little Fox Lane, approximately 550 yards south of the Town of Weston municipal boundary and the surrounding land use is single-family residential homes in the Residence AAA zone.
2. The lot is currently being developed with a new single-family dwelling and combined barn structure with a Zoning Permit (#41877) that was issued January 4, 2018.
3. The subject property is in the Residence AAA (2-acre) district, and is a conforming in respect to lot area with 2.011 acres. The property contains 148 SF of steep slopes along the southwest corner and has no inland wetlands.

Proposal

4. The applicant seeks approval for after-the-fact grading on their property to construct an outdoor riding rink which will extend beyond 25 feet from the dwelling/barn structure that is currently being altered, and will therefore not meet the exemption for excavation and fill activities prescribed by §32-8.1.2.
5. The proposed 100' x 180' outdoor riding rink is positioned within the 50-foot rear and side yard setbacks, will be surrounded by a five-foot high fence, and has no sides or roof.

6. The rink area has been graded to make it level and will consist of a retaining wall, gravel base material and as indicated at the 2/6/2020 public hearing the rink will be finished with topsoil and grass.
7. The applicant states that four (4) horses will be boarded in the barn/dwelling structure and the owner of this property resides in a dwelling on the adjacent lot to the south of this property.
8. The future occupant of the dwelling/barn structure on the subject property, Vanessa D'Alessandro, submitted a letter dated 11/26/19 which states the "...the horses on our property are for personal use only. We are not creating a commercial use, riding academy or boarding stable".
9. The project involves the addition of 2,633 cubic yards of excavation and fill across a stated 30,500 square feet of area, this includes 722 cubic yards of excavation, 578 cubic yards of fill, and 1,333 cubic yards of rink base material.
10. The applicant submitted a landscape plan that was revised on 2/4/2020 that shows *Liquidambar* and *Arborvitae* between the rink and the residential neighbors.
11. Comments from the Engineering Department dated 11/6/19 and revised 2/3/2020, which include the specification of the retaining wall, note that the materials for the outdoor riding rink need to be specified however, it substantially meets the drainage requirements.
12. Testimony was received at the February 6, 2020 public hearing.

NOW THEREFORE, BE IT RESOLVED that 10 Little Fox Lane, Appl. #19-050 submitted by Jim Kousidis, Kousidis Engineering LLC for property owned by Michael Ippolito for a Site Plan and Special Permit for excavation and fill activities to construct an outdoor riding rink for horses and associated regrading for property located in the Residence AAA zone, PID#C15001000 be **GRANTED** with the following conditions:

1. Existing Conditions Survey, prepared by Charles L. Leonard IV, LLC last revised 4/6/2017.
2. Conformance to the Site Development Plan and Regrading Plan, prepared by Kousidis Engineering, LLC dated 9/16/2019, and revised at the public hearing on 2/6/2020 to top soil and grass will be the finished substrate for the rink.
3. Conformance to the Landscape Plan, prepared by Glengate Landscape, last revised 2/4/2020.
4. As agreed to by the applicant, this outdoor riding rink shall remain for personal use only and shall not be used for any commercial activities that include training, boarding or competitions.
5. Prior to issuance of a Zoning Permit:
 - a. Final Engineering Department Signoff; and
 - b. Proof of filing the resolution of approval on the Land Records; and
6. All new utilities shall be placed underground.
7. All required plantings shall be maintained in a healthy growing condition and all fences and walls shall be maintained in good physical condition.
8. The replacement and/or repair of any wall greater than 4 feet in height shall require the issuance of building permit.
9. All work approved pursuant to this Special Permit/Site Plan shall be completed within 5 years of date of approval, by
10. Prior to issuance of a Zoning Certificate of Compliance, the applicant shall submit a final "As-Built" survey.

11. This is a conditional approval. Each condition is an integral part of the Commission decision. Should any of the conditions, on appeal from this decision, be found to be void or of no legal effect, then this conditional approval is likewise void. The applicant may refile another application for review.

ENFORCEMENT Failure to comply with any standard or condition contained in this Resolution, shall be considered a zoning violation pursuant to §45-2 of the Westport Zoning Regulations. The failure to undertake corrective action within 10 days of being notified of such violation may result in the following remedies: 1) issuance of a notice of violation; 2) issuance of a cease and desist order; 3) issuance of a municipal citation with daily fines of up the maximum allowed by statute; and/or 4) enforcement action through a judicial proceeding.

Reasons

1. The application as conditioned has been found to be in conformance with all applicable zoning regulations, with the 2017 Plan of Conservation and Development, and the Site Plan and Special Permit standards listed in §44-5 and §44-6.

VOTE:

AYES	-5-	{Dobin, Rutstein, Cammeyer, Lebowitz, Walsh}
NAYS	-1-	{Stephens}
ABSTENTIONS	-0-	

Very truly yours,



Danielle Dobin, Chairman
Planning & Zoning Commission

cc: Amrik Matharu, DPW Engineering
Mel Barr, Barr Associates